



PATENT APPLICATION

In the United States Patent and Trademark Office

Applicant: Stolte et al.

Docket No.: 10034.542

Date: July 20, 2010

Application No.: 10/576,645

Int'l Filing Date: November 4, 2004

Art Unit: 3644

Examiner: T. Nguyen

For: DEVICE AND METHOD FOR AUTOMATICALLY STARTING A MILKING PROCESS

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to: Office of Petitions, Mail Stop Petition, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

On July 20, 2010

Signature

Jeffry W. Smith

Jeffry W. Smith, Reg. No. 33455
Name of Applicant, assignee or
Registered Representative

**PETITION TO REVIVE AND
STATEMENT UNDER 37 C.F.R. 1.137(b)**

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Undersigned Counsel for Applicants hereby provides a showing of cause under 37 C.F.R. 1.137(b) for revival due to unintentional abandonment of the above-captioned patent application, and declares as follows:

1. Undersigned Counsel represents Applicants (*Stolte et al.*) in the above-captioned patent application.
2. A Notice of Abandonment of the application was mailed on July 13, 2010, and it was received by Undersigned Counsel on July 15, 2010. (Ex. A.) This Notice was sent in error, as explained below.

*Applicant: Stolte et al.
Application No.: 10/576,645

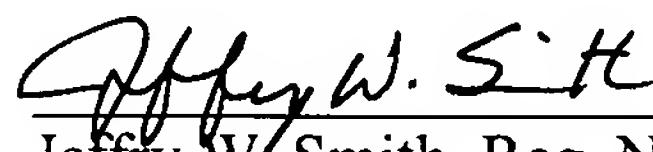
3. The Notice of Abandonment indicates that it was entered because no response had been filed for the January 5, 2010 official action. (Ex. B.) A three-month response period had been set, so a six-month statutory period would have expired July 5, 2010. July 5, 2010 was a federal holiday, so the last day for filing a response was July 6, 2010.

4. Attached are Applicants' return receipt postcard that was date-stamped July 6, 2010 by the United States Patent & Trademark Office (Ex. C); a copy of Applicants' July 6, 2010 response to the non-final official action (Ex. D); and a copy of the Petition for a Three-Month Extension of Time that was filed together with the appropriate fee (Ex. E). These documents show that the January 5, 2010 action was responded to in a timely manner because it was filed on the last day of the six-month statutory period.

5. The alleged failure to file a Reply as referenced in the Notice of Abandonment, therefore, appears to be a Patent Office error, and not of Applicants or Undersigned Counsel, and this application should be revived at no cost to Applicants. Nonetheless, if the office disagrees, it may charge Deposit Account No. 50-2911 for any necessary fees.

6. Undersigned Counsel has been warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. All statements made of the declarant's own knowledge are true and that all statements made on information and belief are believed to be true.

Respectfully submitted,


Jeffry W. Smith, Reg. No. 33455
Attorney for Applicant
SMITH LAW OFFICE
8000 Excelsior Drive, Suite 301
Madison, WI 53717
(608) 824-8300



UNITED STATES PATENT AND TRADEMARK OFFICE

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PATENT & TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,645	03/09/2007	Friedrich Stolte	10034.542	5735
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39231	7590	07/13/2010
SMITH LAW OFFICE		
8000 EXCELSIOR DRIVE, SUITE 301		
MADISON, WI 53717		

RECEIVED

JUL 15 2010

EXAMINER

NGUYEN, TRINH T

ART UNIT

PAPER NUMBER

3644

SMITH LAW OFFICE

MAIL DATE

DELIVERY MODE

07/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ACTION: Petition to Revive
DUE DATE: 9/13/10
ENTERED: 7/15/10
BY: *ADM*

EXHIBIT A



Notice of Abandonment	Application No.	Applicant(s)
	10/576,645	STOLTE ET AL.
	Examiner Trinh T. Nguyen	Art Unit 3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 05 January 2010.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) The issue fee and publication fee, if applicable, has not been received.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:

/T. T. N./
Primary Examiner, Art Unit 3644

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



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1-8-10 SmithlawOfficeUNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,645	03/09/2007	Friedrich Stolte	10034.542	5735
39231	7590	01/05/2010	EXAMINER	
SMITH LAW OFFICE 8000 EXCELSIOR DRIVE, SUITE 301 MADISON, WI 53717				NGUYEN, TRINH T
ART UNIT		PAPER NUMBER		
		3644		
MAIL DATE		DELIVERY MODE		
		01/05/2010 PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ACTION: Response
DUE DATE 4/5/10
ENTERED 1/8/10
BY *Alm*

EXHIBIT B

Office Action Summary	Application No.	Applicant(s)	
	10/576,645	STOLTE ET AL.	
	Examiner	Art Unit	
	Trinh T. Nguyen	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Election dated 7/29/09.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
 - 4a) Of the above claim(s) 24-26 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 July 2009 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/31/08.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I in the reply filed on 7/29/09 is acknowledged. However, as a result of Applicant's amendment to claims 1-14 and 17-21, it is noted that Group II is now part of Group I. Furthermore, it is noted that claims 24-26 have been withdrawn from further consideration pursuant to as being drawn to a nonelected invention and that the election is elected **without traverse** because Applicant presented no reasons explaining why the restriction requirement is improper. Therefore, the restriction requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 4,6,12,18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, the phrase "the predetermined threshold value is independent of an operating vacuum" is confusing since there are no definitions as to what "the predetermined threshold value" and "an operating vacuum" defines and/or implies.

In claim 6, the phrase "the predetermined threshold value is influenced by the biasing element" is confusing because it is unclear as to what the term "influenced" defined and/or intends to be encompassed.

In claim 12, the phrase "the sensor element is contactless" is confusing because it is unclear as to what the term "contactless" defined and/or intends to be encompassed.

In claim 18, the phrase "permits air to flow from a rapid ventilation aperture" confusing because it is unclear as to what "rapid ventilation aperture" defined and/or intends to be encompassed.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Great Britain Patent 1481674 (GB'674).

GB'674 discloses a milking machine unit cylinder comprising:

a flexible element (5);

at least one sensor element (18) which detects a substantial weight on the flexible element to trigger a start signal for a milking process (as shown in Figure 2, it is noted that the movement of cylinder (1) causes some sort of pull/tension/weight on the flexible element (5) and that sensor (18) detects the pull/tension/weight on the flexible element and triggers the milking process, (see lines 66-90)); and

a rapid ventilation valve (17) in communication with the sensor element (it is noted that there must be some sort of connection/communication between valve (17)

and sensor (18) since lines 66-70 indicates that the switch/sensor (18) opens or closes the valve (17)).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-14, and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain Patent 1481674 (GB'674).

With respect to all the specific components as claimed in claims 2-14, and 17-21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the cylinder of GB'674 so as to include all the specific components as claimed, in order to provide a more versatile and efficient milking unit cylinder and thus improve the overall milking milking operation.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (1:30 P.M to 10:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571) 272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Trinh T Nguyen/
Primary Examiner, Art Unit 3644
1/3/10

Notice of References Cited		Application/Control No.	Applicant(s)/Patent Under Reexamination STOLTE ET AL.	
		Examiner Trinh T. Nguyen	Art Unit 3644	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-4,741,287	05-1988	Kummer, Jan	119/14.08
*	B	US-6,978,733	12-2005	Petterson et al.	119/14.1
*	C	US-3,929,103	12-1975	Schluckbier, Gary W.	119/14.08
*	D	US-4,523,545	06-1985	Kummer, Jan	119/14.08
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

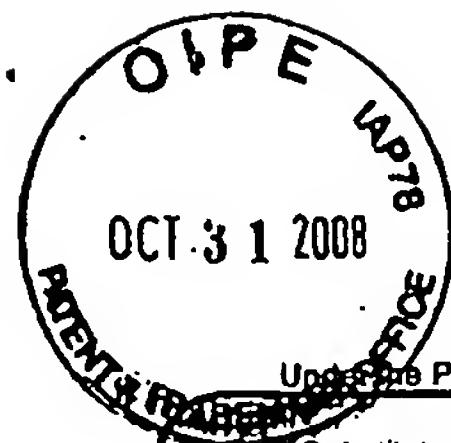
FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



10576645 - GAU: 3644

PTO/SB/08a (09-08)

Approved for use through 10/31/2008. OMB 0651-0031

Approved for use through 10/31/2008. GPO 08-1403

~~Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.~~

Substitute for form 1449/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheets

of

Complete if Known	
Application Number	10/576,645
Filing Date	November 4, 2004
First Named Inventor	Friedrich Stolte
Art Unit	3644
Examiner Name	
Attorney Docket Number	10034.542

FOREIGN PATENT DOCUMENTS					
Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear
		Country Code ³ -Number ⁴ -Kind Code ⁵ (if known)			
		DE 25 54 998 A1	06-16-1976	Kummer	
		DE 25 54 998 C2	11-04-1982	Kummer	
		DE 30 44 445 A1	09-17-1981	Bothur et al.	
		DE 44 38 236 C1	11-02-1995	Bücker	
		DE 87 07 855 U1	10-01-1987	Mertens	
		DE 100 30 408 A1	02-07-2002	Bücker	

Examiner Signature	/Trinh Nguyen/	Date Considered	01/03/2010
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¹EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. ²Applicant's unique citation designation number (optional). ³See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ⁴Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁵For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁶Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁷Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH /TN/

PTO/SB/08a (09-08)

Approved for use through 10/31/2008. OMB 0651-0031

Approved for use through 10/31/2006. GPO 083-10031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Substitute for form 1449/PTO		<i>Check one or more boxes if information on this sheet contains a valid USMS control number.</i>	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(Use as many sheets as necessary)</i>			
		Complete if Known	
		Application Number ·	10/576,645
		Filing Date	November 4, 2004
		First Named Inventor	Friedrich Stoltze
		Art Unit	3644
		Examiner Name	
		Attorney Docket Number	10034.542
Sheet	of		

U. S. PATENT DOCUMENTS

FOREIGN PATENT DOCUMENTS

Examiner Signature	/Trinh Nguyen/	Date Considered	01/03/2010
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ALL REFERENCES CONSIDERED EXCEPT WHERE I LINED THROUGH / T N /

PTO/SB/08b (09-08)

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Substitute for form 1449/PTO				Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT				Application Number	10/576,645
(Use as many sheets as necessary)				Filing Date	November 4, 2004
				First Named Inventor	Friedrich Stolte
				Art Unit	3644
				Examiner Name	
Sheet		of		Attorney Docket Number	10034.542

NON PATENT LITERATURE DOCUMENTS

Examiner Signature	/Trinh Nguyen/	Date Considered	01/03/2010
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

1 Applicant's unique citation designation number (optional). 2 Applicant is to place a check mark here if English language Translation is attached.

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Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH /TN/